



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT WITH TERRY / PETERSON DEVELOPMENT ONE, L.L.C. Registration No. VAR450796

SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Terry / Peterson Development One, L.L.C. for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "TPDO" means Terry / Peterson Development One, L.L.C., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Regulation" means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
9. "Permit," means the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Construction Activities (9 VAC 25-180-70).

SECTION C: Findings of Fact and Conclusions of Law

1. On July 10, 2002, DEQ received a complete registration statement from TPDO (owner/operator) for coverage under the Permit. Coverage was sought for construction of Princess Anne Quarters (PAQ), a development located on Princess Anne Rd. in Virginia Beach, Virginia. Coverage under the Permit became effective July 15, 2002 and will expire June 30, 2004. PAQ is a proposed residential development consisting of 75 individual single-family lots encompassing a total land area of approximately 32 acres with a total disturbed area of approximately 27 acres.
2. Section 62.1-44.5.A of the Code and Section 9 VAC 25-31-50.A. of the Regulation state: "Except in compliance with a permit...issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
3. Section 62.1-44.5.B of the Code and Section 9 VAC 25-31-50.B of the Regulation state that any person "who discharges or causes or allows a discharge of...wastes...into or upon state waters shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery."
4. Part II.A of the Permit requires TPDO to develop a storm water pollution prevention plan (SWP3) and to implement and provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.
5. Part II.D of the Permit specifies the items required to be contained in SWP3.
6. On its registration statement, TPDO indicated a SWP3 had been prepared in accordance with the requirements of the VPDES General Permit for Storm Water Discharges from Construction Activities. TPDO indicated that its Erosion and Sediment (E&S) Control Plan would serve as its SWP3. Under Part II of the Permit, the E&S Control Plan may serve as the SWP3 provided it meets or exceeds the SWP3 requirements of Part II.D of the Permit. As is noted below, the E&S Control Plan did not meet the requirements of Part II.D of the Permit.
7. Part III.L of the Permit states: "The permittee shall comply with all conditions of this permit."
8. On March 16 and April 9, 2003 DEQ compliance staff (Staff) observed an unauthorized discharge flowing off the PAQ site, under Princess Anne Rd. via a culvert, into what appeared to be wetlands adjacent to West Neck Creek.
9. On April 10, 2003, Staff observed TPDO flushing a potable water line on-site. The water from this flushing activity was observed flowing through an unstabilized ditch dug by TPDO, which was connected to an unprotected drop inlet between lots #65 and #66 of the development. The water had become sediment-laden prior to entering the drop inlet and discharged offsite through the culvert noted above. TPDO's SWP3 states, "Discharge water from flushing on-site potable water lines shall be contained on site with no discharge."
10. The unauthorized discharges noted in paragraphs 8 and 9 above were not reported to DEQ. These discharges were unauthorized in that they occurred during a time

that TPDO was conducting construction activities at the site either without a sufficient SWP3 or without implementation of required SWP3 practices (as is noted below), in violation of the conditions of Part II of the Permit (9 VAC 25-180-70).

11. On March 20, 2003, Staff reviewed the E&S Control Plan and found the following SWP3 components had not been implemented and/or included in the SWP3:

- a. Part II.D.2a of the Permit requires that the SWP3 provide for the design and implementation of appropriate erosion and sediment controls. Part II.D.2a(1)(b) specifies that control measures must be properly selected, installed and maintained in accordance with manufacturer's specifications and good engineering practices. Part II.D.2a(1)(b) further states that if inspection or other information indicates that a control has been used inappropriately or incorrectly then the permittee must replace or modify the control.

On March 16 and 28, 2003, April 9, 2003, May 2, 2003, and October 16, 2003, Staff observed that silt fences were either not installed, were installed incorrectly, or were not maintained.

On March 16 and 28, 2003, and April 9 and 10, 2003 Staff observed that stockpiles were not protected with sediment trapping devices.

On March 16, 20, and 28, 2003, April 9 and 10, 2003, May 2, 2003, and December 16, 19, and 31, 2003, Staff observed that storm water inlet protection was not installed or was installed incorrectly before and during construction and was not maintained during construction activity.

On its inspections Staff observed that PAQ's temporary sediment trap was not installed before the first phase of construction and was not built in accordance with the approved E&S control plan. The E&S control plan requires that a temporary intake riser be built in order to provide adequate settling time prior to discharge and that riprap be placed at the normal water elevation of the trap to prevent erosion. The riser was not built and the riprap was not placed at normal water elevation. As of December 31, 2003, the construction of the sediment trap had not been completed.

- b. Part II.D.2c (2) of the Permit requires the SWP3 to contain and make provisions for implementation of controls to minimize the transport of sediment by vehicular tracking onto paved surfaces. This section of the Permit also states: "Where sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day."

On March 20, 2003 and December 16, 19, and 31, 2003 Staff observed accumulations of sediment on paved public roads within PAQ and on Princess Anne Rd.

- c. Part II.D.2a (2) of the Permit requires the SWP3 to contain a record of dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated.

On August 12, 2003, Staff's review of TPDO's records revealed that documentation of major grading activities was incomplete. The records only indicated the dates when construction activities began.

- d. Part II.D.2a (2) of the Permit requires the SWP3 to contain and make provisions for stabilization measures "as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 7 days after the construction activity in that portion of the site has temporarily or permanently ceased." Additionally, Part II.D.2a(2) states: "Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 30 days, temporary stabilization measures do not have to be initiated on that portion of the site."

Staff inspections on October 16, 2003 and December 31, 2003, documented that temporary stabilization measures were not provided to the denuded areas surrounding the temporary sediment trap that were left inactive from October 16, 2003 to December 31, 2003.

- 12. On October 1, 2003, the National Weather Service in Wakefield, Virginia published a report stating, "The period from January to September 2003 (49.16inches) was the 3rd wettest in the past 100 years and the 6th wettest of all time for the Norfolk area."
- 13. On April 14, 2003, DEQ issued TPDO Notice of Violation No. W2003-04-T-0001 advising of the above-mentioned observations and applicable citations.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in VA Code § 62.1-44.15(8a) and (8d), orders TPDO, and TPDO agrees, to the following:

- 1. Voluntarily pay a civil charge of \$12,700 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include TPDO's Federal Identification Number and shall note on its face that the payment is being made in accordance with the requirements of this Order. Payment shall be made

by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

2. Comply with all the requirements of the Permit.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of TPDO, for good cause shown by TPDO, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to TPDO by DEQ on April 14, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the site as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, TPDO admits the jurisdictional allegations, but does not admit the factual findings, and conclusions of law contained herein.
4. TPDO declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by TPDO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. TPDO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. TPDO shall show that such circumstances were beyond its control and not due to a lack of good

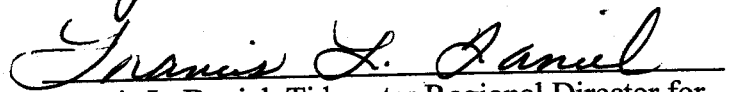
faith or diligence on its part. TPDO shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which TPDO intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto; their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon its execution by both the Director or his designee and TPDO. Notwithstanding the foregoing, TPDO agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until TPDO petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order. In addition, the Director or the Board may terminate this Order, for good cause upon 30 days' written notice to TPDO. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve TPDO from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, TPDO voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 21, 2004.


Francis L. Daniel, Tidewater Regional Director for
Robert G. Burnley, Director
Department of Environmental Quality

TPDO voluntarily agrees to the issuance of this Order.

TERRY/PETERSON DEVELOPMENT ONE, L.L.C.

By: John H. Peterson, Jr., Operating Manager

Date: April 15, 2004

Commonwealth of Virginia

City/County of Virginia Beach, VA

The foregoing document was signed and acknowledged before me this 15th day of

April, 2004, by John H. Peterson, Jr., who is

Operating Manager of Terry/Peterson Development One, L.L.C., on behalf of the limited liability company.

Monna Y. Watts
Notary Public

My commission expires: 4/30/05